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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
U.S. Court of Appeals Building, 3rd Floor
Washington, D.C. 20536

Identifying label attached to
clearly unwarranted
at personal security

FILE: [REDACTED] Office: SAN FRANCISCO, CA

Date: **JAN 03 2002**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under
Section 212(i) of the Immigration and Nationality Act, 8 U.S.C.
1182(i)

IN BEHALF OF APPLICANT: [REDACTED]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained. The application will be declared unnecessary, and all action on it will be terminated.

The applicant is a native and citizen of Qatar who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having falsely filed an application for amnesty under section 245A of the Act. The applicant married a citizen of the United States in 1997 and is the beneficiary of an approved petition for alien relative. He seeks the above waiver in order to remain in the United States and reside with his spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel asserts that the decision to deny the applicant's waiver request was an abuse of discretion and erred in failing to find extreme hardship to the applicant's spouse. Counsel also asserts that the decision failed to consider the circumstances under which the applicant filed his legalization claim and that the applicant had no intent to defraud in that he did not know that the documents he filed were false.

The record reflects that the applicant filed false documents in connection with an application for amnesty (also referred to as "legalization") under section 245A of the Act after having been admitted to the United States as a visitor for pleasure in 1989.

Regarding applications for adjustment of status of amnesty applicants, section 245A(c) of the Act, 8 U.S.C. 1255a(c), states:

(5) CONFIDENTIALITY OF INFORMATION.-

(A) IN GENERAL.-Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may-

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, for enforcement of paragraph (6), or for the preparation of reports to Congress under § 404 of the Immigration Reform and Control Act of 1986;

(ii) make any publication whereby the information furnished by any particular applicant can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Since the Service is statutorily precluded from using the information regarding fraud or willful misrepresentation perpetrated in proceedings under section 245A of the Act, except for that specific application, the district director's decision will be withdrawn, as no other fraud has been established. The application will be declared unnecessary and moot, and all action on it will be terminated.

ORDER: The appeal is sustained. The application is declared unnecessary, and all action on it is terminated.